Remarks

In the present application, Claims 1 and 3-26 are pending and rejected.

By this amendment, claims 1, 3, 9-11, 15, 16 and 26 have been amended. No new matter has been added to the prosecution of this application. For at least the reasons stated below, Applicants assert that all claims are in condition for allowance.

I. The Generation of National Retail Traffic Index Data

As set forth in the specification, the present invention provides a system and method to generate traffic index data. Once generated, this traffic index data provides a measure or indication related to the traffic at the site being monitored, often relative to similar national traffic data. This measure or indication includes some component of pedestrian traffic data, but also incorporates non-traffic data. Generating the traffic index data in this manner provides a metric which allows users to analyze or judge a particular site or location by comparing this data with data from other locations.

As suggested above, the generation of national retail traffic index information provides merchants, advertisers, managers, landlords, and others with a mechanism for measuring certain characteristics of a location. This information combines traffic data with non-traffic data to provide users (merchants, advertisers, landlords, leasing agents, etc.) with information about a particular location. Generally speaking, this invention collects both traffic data and non-traffic data, and produces national retail traffic index data which can be accessed via a data mart. The national retail traffic index data includes a calculated indices based upon the above-referenced information. Thus, a somewhat objective measure related to pedestrian traffic, and non-traffic data, can be provided relative to each location.

As set out in the specification, the traffic index data is developed/calculated based on mathematical algorithms to produce usable information for a user. *See*, p.15, lines 17-25. An objective comparison of information related to multiple locations is then possible. *See*,

specification, p. 2, lines 10-20. For example, the traffic index data may correlate pedestrian traffic, location/site size, location/site age, sales, and region information. *See*, specification, p. 1, line 30 – p. 2, line 1. Based on these correlations a user can then review information about a selected location as compared to generalized information as desired. It is then possible to compare this information with national data, to determine rankings, comparisons, etc. Naturally, other combinations are possible. *Id.*, p. 2, lines 1-9.

Reviewing the amended claims, it can be seen that they include, *inter ali*:

(1) a traffic database for storing the pedestrian traffic data;

(2) at least one database for storing non-traffic related data;

(3) a view creator for generating national retail traffic index data by processing the data stored in these databases, the national retail traffic index data providing a measure related to traffic data and non-traffic data at the various sites; and

(4) a national retail traffic index data mart for storing the national retail traffic index data .... accessible by users in an effort to determine a user relevant national traffic index.

The cited references do not discuss or suggest the creation of national retail traffic index data as outlined above. This ability to produce such data fills a void that previously existed for these users.

II. The § 103 Rejections

Claims 1, 3-8, 12, 19 and 23-26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Conrad et al. (U.S. Patent Number 5,465,115), in view of Fox et al. (U.S. Patent Number 5,832,456), and Sneeringer (U.S. Patent No. 6,618,709). Due to a lack of teaching and a lack of any motivation to combine these references, applicant submits that these rejections are unsupported and inappropriate.

In summary, the Examiner asserts that: (1) Conrad shows *a pedestrian traffic indexing system comprising a plurality of traffic monitors at a plurality of provider sites, a server connected to said traffic monitors to receive traffic data . . . ; a traffic database for storing said pedestrian traffic data; displaying pedestrian traffic count; and a communications connection;* (2) Fox et al. discloses *at least one database for storing non-traffic related data; generating national retail traffic index data by processing data stored in the at least one database for storing non-traffic related data; and a national retail traffic index data mart for storing the national retail traffic index data*; *in an analogous art for purposes of weather adapted business performance forecasting*; and (3) Sneeringer shows *a data communications connection for transferring and accessing databases in an analogous art for purpose of web based monitoring of energy related usage, and client accessibility therefore*. See Office Action, pp. 2-5 (¶¶ 6-12). In light of this alleged teaching, the Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify Conrad's functions of video monitoring for retail with Fox's functions of viewing and forecasting of business performance and Sneeringer's functions of web based monitoring.

Applicant submits that the listed references do not provide sufficient teaching to support the Examiner's conclusion. In addition, the suggestion that one skilled in the art would combine these references is speculation at best. Thus, the rejections under 35 U.S.C. § 103 are unfounded and should be removed.

As further outlined below, the cited references do not produce calculated traffic index data that is made available to users via a data mart. More specifically, the cited references do not produce traffic index data that is based upon a plurality of different data types, including traffic data and non-traffic data. This is made clear by reviewing each of the cited references.

Conrad et al. Simply Provides Counting

As previously indicated, Conrad et al. does relate to traffic monitoring for retail establishments. Simply stated, Conrad et al. describes one method and approach for monitoring pedestrian traffic, as people move into and out of an establishment. As set forth in the above claims, the monitoring of pedestrian traffic and the creation of traffic data is clearly one element of the claims. In the specification, the Applicants contemplated the use of Conrad et al. as one potential device or method for monitoring pedestrian traffic. *See*, specification, p. 5, lines 14-17; p.7, lines 7-9. However, Conrad et al. is configured to simply produce traffic counts and either communicate or store this information. As conceded by the Examiner, many remaining elements are clearly omitted from the teaching of Conrad et al.

Fox et al. Does not Provide Sufficient Teaching

The Examiner has cited Fox et al. as teaching other elements related to traffic monitoring systems. While Fox et al. generally relates to retail activities, its concepts and teachings are simply much different than that of the present invention. More specifically, Fox et al. is specifically directed towards the correlation of weather data with business forecasting activities. Fox et al. attempts to establish a correlation between historical sales data and weather data. If a correlation exists, this is then used to generate sales forecasts using existing weather forecasts. *See Fox et al.*, col. 6, lines 18-34. Some of this business forecasting involves the monitoring of traffic along with consumer activity (i.e., purchases). Fox et al., however, does not involve the monitoring of traffic data for specific purposes of creating index data which is available to users via a data mart. More importantly, Fox et al. does not produce calculated index data, as contemplated by the claims of the present invention.

Sneeringer is Not Applicable

As outlined by the Examiner, Sneeringer is related to the monitoring of energy consumption by individuals so that educated energy purchases can be made. Clearly, this is not in any way related to the monitoring of retail traffic, and the development of a national retail traffic index, as contemplated by the present invention.

The Sneeringer invention is based upon a customer's ability to purchase power from multiple sources. *See*, column 2, lines 40-43. The invention, thus provides an Internet based platform providing energy management information and/or service to customers, be it commercial, industrial, and/or residential. Based upon this information, these customers can then make educated purchases, and attempt to bargain for their energy consumption needs.

At best, Sneeringer provides an example of monitoring used for predictive purposes. This monitoring however, is not used to create any type of calculated measure of a particular energy user. Further, the monitoring of Sneeringer relates to energy alone, no additional data is considered.

The Claimed Invention is Not Obvious

Again, the concept of the present invention initially relates to the generation and storage of both a traffic database and a non-traffic database. This information is then utilized to generate national retail traffic index data, which includes calculated indexes based upon predetermined formulas and algorithms carried out by the computer systems. This index data is made available at a data mart, which is accessible by users. This index data is not simply a "catalog" or "table of contents" as may often considered when the term "index" is utilized. Rather, the index data of the present invention provides a calculated score or rating. As stated, the index data is a comprehensive overview of nation wide retail traffic information. The claimed invention utilizes the necessary inputs to calculate this

national retail traffic index. See specification, p.4, lines 23-36. As outlined above, this concept is not taught or suggested by any of the references.

Further, given the diverse nature of the various references, it is pure speculation to suggest that these references would be combined to render obvious the present invention. As discussed above, each cited reference is primarily related to a very different focus. Aside from the Conrad et al. reference, an inventor would not be inclined to combine these various references when developing the presently claimed invention. Conrad et al. does relate to traffic monitoring, and is considered to be one component usable by the present invention. Fox et al. is related to sales data, and weather, but not to the creation of index data. While providing an interesting concept, it is not specifically relevant to the present invention. Sneeringer is clearly unrelated, as it is entirely related to energy consumption. Applicant cannot agree that this should be considered "analogous art", given the subject matter of the presently claimed invention. Further, there is nothing in the various references to suggest their combination. In the Office Action, the Examiner has simply indicated that the references are in the same field of endeavor. While this conclusion itself is questionable, no reasons or basis for the combination of these references is given.

In addition to the details discussed above, the application includes several dependent claims containing details not disclosed in the cited references. Specifically, these details specify that the databases for non-traffic related data are: a demographics database for storing census demographics, a profiles database for storing site profiles (associated to a set of provider sites) and corporate profiles (associated to a set of corporations), and a customer database for storing sales data. When combined with the details of the independent claims, these details further differentiate the present invention from the prior art.

The Jannarone Reference Does Not Support Obviousness Conclusion

In addition to the above-referenced rejections, the Examiner has rejected claims 9-11 and 20-22 as unpatentable over Conrad et al. in view of Fox et al., Sneeringer and Jannarone. In summary, the Examiner asserts that these claims are obvious in light of the teaching in the cited references.

Claims 9-11 and 20-22 are all dependent claims, thus the comments outlined above apply equally here. In addition, the Applicant submits that Jannarone is not properly combinable with the previous cited references, as no motivation for that combination exists.

Again, in the context of a system for producing traffic index data, the use of a "concurrent learning information processor" appears very unrelated. As such, Applicant submits that it is pure speculation to combine this reference with the multitude of references already being combined.

With regard to these particular claims, Applicant submits that the overall combination of elements and features is not taught or sufficiently disclosed in the cited references. As such, Applicant submits that these claims are also allowable.

III. Claim Rejections Under 35 USC § 112

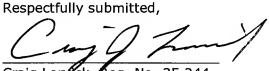
Claims 9-11 and 15-25 have been rejected under 35 USC § 112. In the Notice of Non-Compliant Amendment mailed on April 30, 2007, the Examiner pointed out that these rejections had not been addressed. As outlined above, claims 9-11, 15 and 16 have now been amended. The Applicant submits that these modifications sufficiently address the issues raised by the examiner, and requests withdrawal of these rejections.

IV. Summary and Conclusion

Applicants submit that all pending claims are allowable over the art of record and respectfully requests that a Notice of Allowance be issued in this case. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at 612-607-7387.

If any additional fees are due in connection with the filing of this paper, then the Commissioner is authorized to charge such fees including fees for any extension of time, to Deposit Account No. 50-1901 (Docket 14862-323).

Respectfully submitted,



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